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ably would not have fallen if he had remained behind the railing, he contributed to his injury by placing himself where there was nothing to prevent his fall. But if the truth of this could be demonstrated it would not change the relation of the plaintiff's act to the legal cause of his injury, or make that act, from a legal standpoint, a contributing cause when it was but a condition. And if the claim means that the plaintiff by his act increased the injury merely, then, if this were true, it would not be such contributory negligence as would defeat the action. To have that effect it must be an act or omission which contributes to the happening of the act or event which caused the injury. An act or omission that merely increases or adds to the extent of the loss or injury will not have that effect, though of course it may affect the amount of damages recovered in a given case.

Imputed Negligence—Voluntary Exposure—Rescue.—In *Pennsylvania Co. v. Langendorff*, 48 Ohio St., 28 N. E. Rep. 172, the Supreme Court of Ohio has discussed the question as to how far one may expose his life in attempting to rescue another and yet not be charged with contributory negligence if injured. In that case the defendant was injured in attempting to rescue from in front of an approaching train a child, who had strayed upon the track at a street crossing where the gateman had left his post so that the gates were not lowered. The lower court refused to charge that thus voluntarily risking his life was negligence *per se*, and the refusal is sustained by the Supreme Court. The court hold that the question whether one so acting should be charged with contributory negligence is one of mixed fact and law to be submitted to the jury upon the evidence, with proper directions from the court. "The law will not impute negligence to an effort to preserve human life, unless made under such circumstances as to constitute rashness in the judgment of prudent persons. It is difficult, if not impossible, to lay down in advance a rule by which to determine the extent to which one may risk his safety or his life in emergencies of this character, and not be charged with rashness; but the emergency may be such as to warrant the assumption of a high degree of risk, and one so situated may rightfully expect his acts to be construed in the light of all the circumstances that compelled him to their commission, and that he would not be charged with contributory negligence, so as to defeat a right of action, because the result showed that the risk he assumed was greater than, in the excitement of the moment, he had contemplated." In

such cases the injury must be attributed to the one that negligently exposed to danger the person who required assistance.

Carriers — Negligence — Act of God.—In *Gleeson v. Virginia Midland Ry. Co.*, 11 Sup. Ct. Rep. 859, the U. S. Supreme Court held that a land-slide in a railway cut, caused by a fall of rain not of unusual violence, is not an act of God so as to excuse the company from liability for an accident caused thereby. Lamar, J., who delivered the opinion, says in the course of it: "Against such an event it was the duty of the company to have guarded. Extraordinary floods, storms of unusual violence, sudden tempests, severe frosts, great droughts, lightnings, earthquakes, sudden deaths and illnesses have been held to be 'acts of God'; but we know of no instance in which a rain of not unusual violence, and the probable results thereof in softening the superficial earth, have been so considered. * * * If it be the duty of the company (as it unquestionably is) in the erection of the fills and the necessary bridges, to so construct them that they shall be reasonably safe, and to maintain them in a reasonably safe condition, no reason can be assigned why the same duty should not exist in regard to the cuts. Just as surely as the laws of gravitation will cause a heavy train to fall through a defective or rotten bridge, just so surely will those same laws cause land-slides and the consequent dangerous obstructions to the track itself from ill-constructed railway cuts. * * * Ordinary skill would enable the engineers to foresee the result, and ordinary prudence should lead the company to guard against it. To hold any other view would be to over-balance the priceless lives of the travelling public by a mere item of increased expense in the construction of railroads."

Negligence of Sub-contractor.—An interesting case has recently been decided in Massachusetts (*Bickford v. Richards et al.*, 27 N. E. Rep. 1014) in which the distinction between mere non-feasance and mis-feasance on the part of a sub-contractor is clearly shown. B. had made a contract for the removal of some buildings with C., who subsequently sub-let the contract to R. *et al.* The removal was done in such an unworkmanlike and negligent manner that the buildings were greatly injured, and this suit was entered against defendants by B. for the damages. The lower court ordered a verdict for R. there being no privity of contract between them and B., and this decision is now reversed by the Supreme Court. The court says, "The plaintiff's right of action does not depend on the existence of a contract between himself and the